part of the duty claimed by the commissioner or of such portion of it as is then payable by him, may allow the application to be brought on payment of no duty, or of such part only of the duty as to the court seems reasonable, and on security to the satisfaction of the court being given for the duty, or so much of the duty as is not so paid, but in such case the court may order interest at the rate of six per centum per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the court".

In the present case the amount of estate duty claimed by the commissioner is $1,669,000. The petitioner has paid to the commissioner a sum of $600,000, and there is a balance of $1,069,000 still to be paid.

The petitioner applies under section 44(4) for an order that "no further estate duty or interest be paid by the applicant and no further security be furnished to the commissioner" pending the determination by this court of the estate duty payable by the petitioner. Counsel for the petitioner submits that the court has power to make such an order. Counsel for the commissioner submits that the court has no power to make such an order and that payment of the estate duty claimed by the commissioner can be postponed by the court, only on the giving of security by the applicant as provided by section 44(4) of the Ordinance.

In my opinion the contention of counsel for the commissioner is correct. Sections 44(1) and 44(4) of the Ordinance must be read together. Their effect is that any person aggrieved by the decision of the commissioner with respect to the amount of duty claimed by him may, on payment of the duty claimed or such portion of it as is then payable by him or on giving security for the duty or so much of the duty as is not paid, apply to the High Court to determine the amount of duty payable. In my opinion the court has no power to allow an application to be brought under section 44(1) without such security being given to the satisfaction of the court.

The next submission of counsel for the petitioner is that as the petitioner has offered to lodge with the commissioner securities to the total value of $617,000 as security for the payment of $1,069,000 which the commissioner claims as the balance of the estate duty, the petitioner should be allowed to proceed with her application under section 44(1) of the Ordinance.

Counsel for the commissioner submits that before the petitioner's application for the determination of the estate duty payable can be heard she must either pay up the balance of $1,069,000 or provide security for its payment and the security must be worth at least $1,069,000. Counsel contends that any property worth less than $1,069,000 if offered as security would be no security at all. His contention is that the security offered must be full security in the sense that should it become necessary for the commissioner to enforce the security, it should realise an amount sufficient to pay the $1,069,000 due to the commissoiner.

Counsel for the petitioner submits that the expression "security to the satisfaction of the court" appearing in section 44(4) means such security as the court deems sufficient having regard to all the circumstances of the case. In the present case, counsel states that neither the petitioner nor her co-executrix has any other assets in Singapore and it is virtually impossible for them to find any other security. It is suggested under the circumstances it will be a miscarriage of justice if the petitioner is not allowed, for want of security, to proceed with her application under section 44(1) for the determination by this court of the correct amount of the estate duty payable.

In my view the submission of counsel for the commissioner is correct. The expression "security to the satisfaction of the court" means what it states i.e. security which the court considers satisfactory. The court has a discretion as to the mode in which security has to be given, i.e. whether it should be in the form of a banker's guarantee, the deposit of title deeds, a bond with sureties or some other form of security. But the court has no discretion as to the amount of the security. In my opinion the effect of section 44(4) is that where the High Court is satisfied that it would impose hardship to require the applicant, as a condition of the application under section 44(1), to pay the whole or any part of duty claimed by the commissioner, or such portion of it as is then payable by him, it may allow the application to be brought without payment of any part of the duty, or upon payment of such part as to the court seems reasonable, provided that security, satisfactory to the court, is given for the whole or any part of the duty which remains unpaid.

The applicant has offered to deposit with the commissioner securities to the value of $617,000 as security for the balance of $1,069,000. In my opinion she must give security for the whole sum that remains unpaid i.e. $1,069,000 before she can be allowed to proceed with her application under section 44(1). Her application under section 44(4) is accordingly dismissed.

*Application dismissed.*

Solicitors: *Allen & Gledhill.*

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## CHEAM GAIK CHYE v. PUBLIC PROSECUTOR

**[A.Cr.J. (Ong Hock Sim J.) August 6, 1966]**

**[Penang — Criminal Appeal No. 5 of 1966]**

*Fisheries — Punishment for offence under rules made under repealed Fisheries Ordinance — Power to regulate use of traps or fishing nets — Whether includes power*

*to create offence for possession without licence — Interpretation and General Clauses Ordinance, 1948, s. 11(2) — Fisheries Act, 1963, s. 13.*

The appellant had been convicted of being found in possession of a trawler net without licence from the director of fisheries, an offence under rule 2(1) of the rules made under section 13 of the Fisheries Ordinance, (S.S. Cap. 146). which had been repealed by the Fisheries Act, 1963. On appeal it was contended that as no regulations had been made under the Fisheries Act, 1963, the appellant could not be punished under section 13(1) of the Fisheries Act, 1963, which provided for punishment for contravention of the regulations made thereunder.

**Held:** (1) under the provisions of section 11(2) of the Interpretation and General Clauses Ordinance the Fisheries Rules made under the repealed Ordinance continued in force and were deemed to have been made under the Fisheries Act and therefore the breach of such rules could be punished under section 13 of the Fisheries Act;

(2) as no licensing officer had been prescribed under the Fisheries Act, 1963, the charge of not holding a licence from the director of fisheries did not disclose an offence in law;

(3) the power to make regulations to "regulate or prohibit any method of fishing or the use of traps or fishing nets" did not include a power to create an offence for mere possession without licence.

MAGISTRATE'S CRIMINAL APPEAL.

Appellant in person.

*Haji Suhaimi bin Dato' Kamaruddin* (Deputy Public Prosecutor) for the respondent.

**Ong Hock Sim J.:** The appellant was convicted in the magistrate's court at Penang on the 7th day of March, 1966 on a charge:

"That you on 25.10.65 at about 11.30 p.m., in the sea about quarter of a mile off Malay Street Ghaut, Penang were found to have in your possession a trawler net without a licence from the Director of Fisheries, Malaysia, thereby committed an offence under rule 2(1) of the Rules made under section 13 of the Fisheries Ordinance, 1924 and punishable under section 13(1) of the Fisheries Act, 1963".

and was sentenced to a fine of $750 in default 4 months imprisonment. The trawler net was ordered to be confiscated.

The appellant appeals on three grounds, namely, no regulations have been made under the Fisheries Act 1963 and consequently section 13(1) of the Act providing for punishment for contravention of regulations made "thereunder" can have no application. It is also urged that there is no punishment provided under the new Act for breach of the 1924 Fisheries Rules. The grounds of appeal may be seen to be without substance when reference is made to section 11(2) of the Interpretation and General Clauses Ordinance, 1948 (as amended by Ordinance No. 41 of 1953):

"Where a written law repeals in whole or in part any former written law and substitutes other provisions therefor, any subsidiary legislation made under the former written law shall, so far as it is not inconsistent with such substituted provisions, remain in force until revoked or replaced by subsidiary legislation made under the repealing written law, and shall be deemed for all purposes to have been made thereunder".

The objects and reasons in the 1953 Bill stated that it was in order to remove any doubt as to the continuance in force of subsidiary legislation under Enactments repealed that this provision, similar to that in earlier enactments was being re-inserted into the Ordinance to provide that subsidiary legislation under a repealed Ordinance is kept in force until other provision is made under the repealing enactment. The 1924 Fisheries Rules therefore continue in force until other regulations are made under the 1963 Act and are deemed to have been made thereunder and the punishment provision in section 13 of the Act will apply to contraventions of those rules.

The appellant was convicted of being found in possession of a trawler net without a licence from the Director of Fisheries, Malaysia. Section 9(1) of the Fisheries Ordinance (S.S. Cap. 146) provides for issue of licences "by such persons as are prescribed" but sub-section (2) provides that refusal or revocation, as distinct from issue or grant rested with the director of fisheries. The 1963 Fisheries Act provides for the Yang di-Pertuan Agong by regulations under section 2(i) "to prescribe persons by name or by office to be licensing officers". No such regulations have been promulgated and it is equally clear that the charge of not holding a licence from the director of fisheries does not disclose an offence in law.

There is one further matter for consideration and that is whether section 13 of the Fisheries Ordinance (Cap. 146) or section 2 of the Fisheries Act, 1963 (Act No. 8 of 1963) would empower making an offence mere possession of a fishing net. In my view, the power "to regulate or prohibit any method of fishing or the use of traps or fishing nets" cannot be extended beyond the scope thereof to create an offence for mere possession. If possession of nets were to be an offence, then the rule making power should not be restricted to "the use" but also to "custody, control or possession".

There is in this case no evidence that there has been any wrongful user of the net, in fact there is evidence to the contrary. I accordingly set aside the conviction and the order of confiscation and direct that the fine shall be refunded to the appellant and the net returned to him.

There are provisions for the regulation of fishing in the Act which can effectively solve the problems of trawler and inshore fishing interests so that the livelihood of both can be safeguarded to the satisfaction of the parties.

*Conviction and order of confiscation set aside.*